



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,474	06/27/2000	Wordell Nelson	LD 11114	5090
7590 04/20/2004 Timothy E Nauman Esq Fay Sharpe Fagan Minnich & McKee LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			EXAMINER TON, ANABEL	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/604,474

Applicant(s)

NELSON ET AL.

Examiner

Anabel M Ton

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-12, 14-17 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 14 and 20-23 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1,3,4,5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharrah et al (6,250,771) and further in view of McDermott (6,024,471).
2. Sharrah discloses a housing (20), a least one LED within housing (286), a reflector extending from an end of the housing for focusing and dispersing the LED beam to a desired light contour (200,390, col. 3 lines 5-26, focusing ring aids in moving reflector 300 to focus emitted light), the housing encloses a series of batteries, the reflector is selectively adjustable (col. 3 lines 5-26). Sharrah discloses the claimed invention except for the recitation of an adjustable switch coupled to the variable resistor. Mc Dermott discloses an adjustable switch coupled to a variable resistor for controlling the level optical output of flashlight (50), being a rheostat having continuous variable control. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the adjustable switch of McDermott in the flashlight of Sharrah for the purpose of providing the flashlight with a selective optical output since McDermott teaches that the variable switch is desirable for controlling and

selecting a desired light intensity. With regards to claim 5, in the device of McDermott, the reflector being fixed and the LED movable is arbitrary in that if one were to hold the reflector adjustment device and move the body of the flashlight in desired rotatable direction the LED would move with respect to the reflector.

3. Claims 2, 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharrah in further view of McDermott as applied to claim 1 above, and further in view of Lebens.

4. Sharrah and McDermott teach the invention as stated above but do not teach a plurality of LEDs arranged concentrically around a single LED. Lebens teaches a flashlight with a plurality of LEDs arranged concentrically around a single LED. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a multiple amount of LEDs in a flashlight device as taught by Sharrah and McDermott since as taught by Lebens, such a configuration for use in a flashlight is useful so as to provide the user with a desired color output from the multitude of LEDs. Lebens discloses a switch to turn on and off a select number of at least one LED (col. 4 lines 24-45),

Allowable Subject Matter

5. Claims 12, 14-17 and 20-23 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not disclose at least two light emitting diodes mounted within the housing generating a mechanically adjustable LED beam, an

adjustable switch coupled to a variable resistor controlling the optical output wherein the switch is adapted to selectively turn on and off any select number of at least two LEDs .

Response to Arguments

7. Applicant's arguments filed 01/09/04 have been fully considered but they are not persuasive.

8. In response to applicant's argument that the rheostat of McDermott cannot be incorporated into the device of Sharrah since it would be impractical and unworkable in combination, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sharrah discloses a lighting device with at least 1 LED and a reflector extending from the housing for focusing and dispersing the LED beam (please note, applicant has not

provided any structure for "focusing" manually the reflector but simply recites "focusing" which is an inherent quality of reflectors that reflect light in a forward desired direction) .

Motivation for the obviousness rejection being made with respect to the teaching a rheostat device of McDermott being provided in a flashlight being combined with the flashlight of Sharrah, as recited above, is that one of ordinary skill in the art at the time the instant invention was made , provided the Sharrah and McDermott references, would have found it obvious to implement the teaching of the rheostat of McDermott to the flashing of Sharrah since as taught by McDermott, a rheostat for use in a flashlight would be purposeful to provide the ability to manually adjust the lighting intensity of the flashlight by the user to a desired level. With regards to Sharrah failing to teach a reflector extending from the housing, Sharrah teaches a reflector (300) extending from housing (20). Since the reflector is attached to the housing (20), the reflector, with the LED in it "comprises" part of the housing. With regards to Sharrah, McDermott and Leben not being able to be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Motivation for combining the references is recited above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

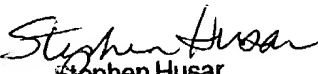
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M Ton whose telephone number is (571) 272-2382. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMT

Anabel M Ton
Examiner
Art Unit 2875


Stephen Husar
Primary Examiner